



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 25, 1990

**Honorable George Pierce
Chairman
Urban Affairs Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769**

LO-90-29

Dear Representative Pierce:

You ask whether the parties to a collective bargaining agreement entered into pursuant to the Fire and Police Employee Relations Act, article 5154c-1, V.T.C.S. (hereinafter, the act), may agree to the following provision:

Each party for the term of this Agreement specifically waives the right to demand or petition for changes herein, whether or not the subjects were known to the parties at the time of execution hereof as proper subjects for Collective Bargaining.

The quoted provision is a part of an agreement between the City of San Antonio and the San Antonio Police Officers' Association.

The act requires that police officers' and firefighters' compensation and other conditions of employment be substantially the same as those in the private sector, and it allows cities that adopt it to engage in collective bargaining with their police officers and firefighters. V.T.C.S. art. 5154c-1, §§ 4, 5. The act contains few provisions in regard to the content of such agreements. We find no provision in the act that would disallow the term about which you inquire.

General contract law does not restrict contractual provisions except to the extent that they violate law or public policy. Lewis v. Davis, 199 S.W.2d 146 (Tex. 1947); Woolsey v. Panhandle Refining Co., 116 S.W.2d 675 (Tex. 1938). As noted above, no provision in the act disallows the provision that you question, nor do we find any other statutory or constitutional provision that disallows the contractual provision. Nor do we believe that the questioned provision violates public policy. Section 2 states the public policy behind the act. V.T.C.S. art. 5154c-1, § 2. That policy requires in section 2(a) that police officers' and firefighters' employment conditions be substantially the same as employment conditions in the private sector. Section 2(b)(1) recognizes that police and firefighters have the right to bargain collectively, and section 2(b)(2) declares that arbitration is a reasonable alternative to strikes. In our judgment, the questioned provision does not, on its face, violate that stated policy. However, should conditions of employment in the private sector change to the extent that the protective service employees no longer had working conditions that were substantially the same, the act would require modification of the agreement.

While we do not believe that the contract provision violates either law or public policy, we question the import of the provision, given the principle of contract law that the power to enter a contract includes the power to amend it. Sargent v. Highlite Broadcasting Co., 466 S.W.2d 866 (Tex. Civ. App. - Austin 1971, no writ); see also Harrison v. City of San Antonio, 695 S.W.2d 271 (Tex. App. - San Antonio 1985, no writ).

Thus, in answer to your supplemental questions, we think that the contract provision does not prohibit either party from asking the other to change the agreement or from negotiating to change the agreement. As noted above, contracts are inherently amendable, and any amendment must be initiated by one party or the other by some sort of request.

A provision in an agreement executed under the Fire and Police Employee Relations Act, article 5154c-1, V.T.C.S., waiving the right to demand or petition for changes in the agreement is a valid contractual provision. The contractual

provision does not prohibit either party from requesting changes in the agreement or negotiating to change the agreement.

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee



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KCG/er

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